

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

June 17, 2015

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Jeffery Nielsen, Chief Investigator
Justin Barney, Hearing Officer
Jennie Jonsson, Administrative Law Judge
Elizabeth Harris, Assistant Attorney General
Renda Christensen, Board Secretary
Amber Nielsen, Assistant Board Secretary
Mark Schaerrer, Investigator
Kadee Wright, Investigator
John Bickmore, Investigator
Van Kagie, Investigator
Jennica Gruver, Real Estate Education Coordinator
Jodie Carter, Real Estate Licensing
Jill Kelsch, Real Estate Licensing
Sarah Nicholson, Real Estate Licensing
Shauna DeWolf, Consumer Protection
Amy Corak, Consumer Protection

COMMISSION MEMBERS PRESENT:

Russell K. Booth, Chair
Lerron E. Little, Vice Chair
Calvin R. Musselman, Commissioner
Lori Chapman, Commissioner
William O. Perry, IV, Commissioner

GUESTS:

Shane Norris	Steven West
Kevin Swenson	Mark VanMondfrans
Kieg Wagner	Cressie Larson
Reid Brinton	Dan Naylor
Mike Herbert	Michele Keavey
Susan Aguilar	Austin Heywood, Jr.
Jared Heywood	Robert Allpine
Hal Reiser	Pete Stevens
Tyler Ayres	Kayla Heywood
John Myers	Mark Duran

The June 17, 2015 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Booth conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - A motion was made and seconded to approve the written minutes from the May 20, 2015 meeting of the Commission. Vote: Chair Booth, yes; Vice Chair Little, yes; Commission Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. Motion was approved.

Public Comment Period - Chair Booth asked all those present to introduce themselves.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported he had a meeting with Representative Froerer, H. Blaine Walker, Mike Ostermiller, Chris Kyler, and Representative Greene regarding the TIC bill that was attempted to be put through in the last legislative session. After discussions it was agreed that Mr. Walker will meet with the Director Stewart will attempt to draft a rule. They will work with Representative Greene to get a rule in place of what disclosures would be required in certain types of TIC transactions. Once everyone is comfortable with the rule, it will be presented to the Commission. The idea is that if we can get a rule that everyone is in agreement with up front, then we can tailor the statute to get the appropriate statute authority. The bill wouldn't be passed until after next session, but the Division will have the rule ready before then.

Director Stewart said the Division has been working on new Public Service Announcements that are going to start airing on television soon. In addition to the Public Service announcements, the Division will also have 42 billboards across the state. The idea of this public service campaign is to get more traffic to the Division's website, and to get the public to ask questions.

There are three different public announcements on television, one for each industry. The real estate clip just wants viewers to know that they should be using someone who is licensed; one deals with understanding appraisals; and one deals with real estate fraud. Director Stewart showed all three clips to the Commission and public in attendance today. These public announcements will begin on television within the next couple of weeks.

ENFORCEMENT REPORT – Jeffery Nielsen

Mr. Nielsen reported in the month of May the Division received 23 complaints; opened 40 cases; closed 4 cases to the AG's office; 50 cases still with the AG's office; closed 14 cases; leaving a total of 296 real estate cases.

Mr. Nielsen brought up a topic that the Commission and Division previously discussed last month on penalties for unlicensed activity. He suggested several options for the Commission to review. Discussion was held after each of these options, and it was requested for Ms. Christensen to add this item for discussion on the Agenda for next month.

There are no enforcement stipulations for review.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the licensing statistics for the last month are continuing to grow for both sales agents and brokers. The growth in brokers in part could be because more companies are getting licensed.

The Division has hired another licensing specialist, Sarah Nicholson, to fill the position previously held by Toni Heldman who has retired. Mr. Fagergren also introduced Jill Kelsch and Jodie Carter who make up the rest of the licensing staff, and he complimented each of them for their good work.

Mr. Fagergren continued a discussion that had been previously started with the Commission. The Division has two applications for brokers for review that have the same issue with their experience logs. The logs show that experience was obtained out of the state of Utah. In one case, Mr. Fagergren tried to contact the Principal Broker on one of the applicant's log. The broker refused to verify the experience on the applicant's log because he was upset that the individual had left his company.

Mr. Fagergren recommends that the Appraiser rules be amended to require that at least 50% of the experience logs for broker applicants be transacted in Utah. It has been a challenge for staff to verify the experience logs when the properties are in a different state. He asked the Commission if they would like to see a proposed rule on this issue. The Division will present a draft rule next in next month's meeting.

Mr. Fagergren presented a document showing proposed changes to the Property Management Experience Table. It shows the activities requiring a real estate license and that fully comply with the affirmative duties contained in R-162-2f-501. Ms. Harris said there are two pending applications before the Division at this time. The Division has reviewed the rules and there are issues that need to be clarified by the Commission before the Division can really make a determination on whether the applications can be approved. The Division is going to file a written request for clarification of the rules and what they mean with the Administrative Law Judge. Once the Division has received this clarification, we will be able to get this information to the Commission by the next meeting for their review. When the decision is reached, the Division can make a determination on the applications.

A motion was made and seconded to have the Division prepare a draft of these changes to be reviewed by the Commission at next month's meeting. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Perry, yes; Commissioner

Chapman, yes; Commissioner Musselman, yes. The motion passes.

There are no education stipulations for review.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Justin Barney

Mr. Barney mentioned that the informal hearing for Stephen West has been withdrawn, and will be reviewed at a later date.

Mr. Barney said the proposed changes to R162-2f-401j, Standards for Property Management, has been out for public comment and as not received any comments. A motion was made and seconded to accept these proposed changes as prepared, and begin the process for rulemaking. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Perry, yes; Commissioner Musselman, yes; Commissioner Chapman, yes. The motion passes. The rule will be made effective on June 22, 2015.

Mr. Barney discussed briefly comments that had been received from the public in last months meeting. Before making a decision as to whether take action for any changes on R162-2f-401a, the Commission has asked the Division to postpone action for 30 days to see if any more public comments were received. A motion was made and seconded to table this topic until next month. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Perry, yes; Commissioner Chapman, yes; Commissioner Musselman, yes. Ms. Christensen will put this topic on the Agenda for next month.

Another proposed rule, R162-2f-201a(19)(20), was discussed. This language discusses if a licensee is going to execute a document on behalf of a principal in a sales transaction, a power of attorney must be attached to it. In meeting with industry members in property management and they have a different way of doing business. When someone wants to rent an apartment they are not represented by an attorney, or a sales agent. Typically, a power of attorney has not been used to sign for the property owner. The managers have in their contract the authority to do that, but our rules say that they need a power of attorney. The Division doesn't think this is necessary, and is proposing a new section. The Division wants to make sure that prospective tenants receive clear indication that the licensee was not representing them, but the property owner. The Division also wanted to make sure that written authorization was specific as to what the licensee can do on behalf of owner. After some discussion, a motion was made and seconded to approve the proposed language as is, and to start the rulemaking process. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Perry, yes; Commissioner Chapman, yes; Commissioner Musselman, yes.

Discussion: Donate Portion of Commission to 501(c)(3)

Director Stewart brought up proposed rule language regarding donations being made out of a licensee's commission with Daniel O'Bannon, Director of Consumer Protection, and he said there are certain things the Commission should consider as far as allowing that donation to be made. Director O'Bannon is not present today, but sent two of his staff members who agreed to give the Commission an overview. If the Commission was to move in that direction and allow an agent or broker to donate a portion of their commission to a 501(c)(3), there are certain things they must understand as far as charity requirements.

Shauna DeWolf and Amy Corak, both from the Division of Consumer Protection, said charities are registered with them and have rules that must be followed. In addition, a professional fund raiser may not knowingly solicit, request, promote, advertise, or sponsor the solicitation in Utah of any contributions for a charitable organization unless the professional fund raiser and the non-exempt organization are both registered under the Charitable Solicitations Act.

Director Stewart said if the Commission wants to move in that direction and wants to allow this donation, then the Division would have to work on a rule amendment. We would then present the draft to Consumer Protection to make sure that if there was a separate form that needed to be created, it would be something they would work on together. After that, we would present the proposed language to the Commission for review. This topic will be added to the Agenda for next month's meeting for further discussion.

INFORMAL HEARINGS:

11:00 Neil Gibbs - Application for License
 Butch Dailey

CLOSED TO PUBLIC

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Musselman, yes; Commissioner Chapman, yes; Commissioner Perry, yes. The motion carries. An Executive Session was held from 12:30 p.m. to 1:05 p.m.

1:06 Brent Morgan - Application for License

FORMAL HEARING:

This formal hearing was conducted by Administrative Law Judge Jonsson

2:13 Austin G. Heywood, Jr. - Application for License
 Hal Reiser, Attorney

Witnesses for Mr. Heywood:
John W. Myers

Tyler Ayres
Robert Alton

Witness for Division:
Austin G. Heywood, Jr.

CLOSED TO PUBLIC

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Musselman, yes; Commissioner Chapman, yes; Commissioner Perry, yes. The motion carries. An Executive Session was held from 5:10 p.m. to 6:20 p.m.

OPEN TO PUBLIC

Results of Executive Session

Neil Gibbs - The results of this hearing will be sent by mail to Mr. Gibbs.

Brent Morgan - The results of this hearing will be sent by mail to Mr. Morgan.

Austin G. Heywood, Jr. – The results of this hearing will be sent by mail to Mr. Reiser (counsel for Mr. Heywood).

A motion was made and seconded to adjourn the meeting. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion passes. The meeting adjourned at 6:20 p.m.